

## LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for October 29, 2003 PLANNING COMMISSION MEETING

**P.A.S.:** Change of Zone #3399 Amendment to Impact Fee Ordinance

**PROPOSAL:** Several amendments are proposed in order to clarify language regarding grandfathering of building permits, handling of administrative costs, arterial street costs, adding inflation to impact fees, processing of low and moderate income reimbursements, eliminating the out of date category exemption table and processing of fee reimbursement for economic development.

**CONCLUSION:** The proposed amendments to impact fee ordinance are in conformance with the goals of the Comprehensive Plan and could help provide for growth and development of the community. Impact fees provide for uniformity and equity among property owners and similar land uses. These amendments retain the original purpose of the impact fee ordinance. The amendments will clarify some minor conflicting sections and will aid in the processing of low and moderate income fee reimbursements. The amendment to the reimbursements for economic development will provide an incentive to primary employers to create new jobs and will aid in administering the criteria.

<b>RECOMMENDATION:</b>
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Approval
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**LEGAL DESCRIPTION:** Zoning Code – amend to add text in the following sections :

27.82.050 imposition of impact fees;  
27.82.060 exemptions from impact fees;  
27.82.070 creation of an impact fee fund and impact fee accounts;  
27.82.080 refunds of impact fees paid;  
27.82.110 miscellaneous provisions;  
Amendments codifying the Downtown/Antelope Valley exclusive area map the benefit areas maps as appendixes to Chapter 27.82; and  
amending the arterial street section of the adopted Lincoln Impact Fee Study and providing for publication by posting on the official bulletin board of the City.

**ASSOCIATED REQUEST:**

Misc. #03012; Criteria for Impact Fee Reimbursement for Economic Development.

**SUMMARY:** In general the amendments to the Impact Fee Ordinance are to:

- a. Clarify that reimbursement in impact fees is for economic development only. Once the City Council adopts the criteria, based on objective standards, then requests will be processed administratively rather than requiring Council hearings and actions. (The specific criteria for Impact Fee Reimbursement for Economic Development is included in the staff report on Misc. #03012.)
- b. Clarify conflicting language regarding the grand-fathering of building permit **applications.**
- c. Clarify that administrative costs are deducted from impact fees and should not be an additional amount added to each fee.
- d. Clarify conflicting language regarding streets that: 1) developers should continue to pay for sidewalks along arterial streets, instead of using arterial street impact fee funds to build sidewalks; 2) utility adjustments in street projects would not be paid from arterial street impact fees; and 3) clarify that developers should continue to pay for additional traffic signals, when warranted. In general, impact fees would be used only at major intersections and approximately the ½ mile point (when warranted.) These changes were based on recommendations by Mayors Infrastructure Finance Committee.
- e. Automatically add inflation, beginning in January 1, 2005, rather than by separate City Council action each time.
- f. Amendment to facilitate reimbursement and processing of previously approved fee reimbursements for low and moderate income housing.
- g. Eliminate out of date category exemption table and clarify processing of amendments to previous agreements granted exemptions.

**COMPREHENSIVE PLAN SPECIFICATIONS:**

These proposals are in conformance with the new 2025 Comprehensive Plan. Selected pertinent sections from the Plan include:

The pertinent principles in regards to impact fees include:

“Overall Guiding Principles

There needs to be a balance between new infrastructure in developing areas and the improvements and maintenance needs of the existing community. Funding for

infrastructure improvements should not focus all of the funds into developing areas, leaving inadequate resources to address needs in other areas. The City and County need to adequately fund infrastructure maintenance and improvements in existing towns and neighborhoods.” (Page F 159)

#### Guiding Principles for Financing Urban Infrastructure

**A Balanced Approach:** The community at large should provide more financing of maintenance and improvements in existing areas. Both new and existing development should pay its fair share of improvement costs due to growth and maintenance. In general, improvements which are of general benefit to the whole community should be paid by the community while improvements which are of special benefit to a specific area should be paid by that area.

**Develop a Fair & Predictable System:** Distribute infrastructure costs fairly among all property owners who benefit from the improvements. The goal of the financing system is that costs should be known in advance of development.

**Minimize Impact on Affordable Housing:** Infrastructure financing should not increase the cost of affordable housing in Lincoln and the City should encourage retention of affordable new housing in existing neighborhoods. (Pages F 160 -161)

Establish an impact fee at time of building permit for road improvement costs in developing areas. Fees should not be at full capital recovery cost for residential uses. Large traffic generators, like commercial and industrial businesses, will pay a majority of the costs due to their traffic impact. Some mechanism should be employed so that the road impact fee does not impact affordable housing.” (Page F 162)

#### **ANALYSIS:**

1. At the time the impact fee ordinance was adopted in January 2003, it was noted that as the impact fee system was implemented, there may be some housekeeping matters to bring forward at a later date. During the past few months a few areas were identified where minor changes in the ordinance would improve the processing of impact fees. The following is an explanation of each proposed change.
2. Section 27.82.060 (a) (5) is being clarified to note that building permits applied for prior to the June 2, 2003 starting date of impact fees will be “grand-fathered” from impact fees. Currently this section stated that the permits had to be issued. However, this is contrary to Section 27.82.0505 (a) which states that impact fees would begin on June 2, 2003 for building permit applications on or after this date. It was determined that the intent was clearly for building permit applications prior to June 2, 2003 to be grand fathered.

3. Section 27.82.060 is also being amended in regards to the category exemptions from impact fees for developments which previously paid for impact fee facilities such as arterial streets or larger water mains (16 inches or larger in size.) Section 27.82.060 (b) (1) referenced a table of preliminary category exemptions determinations. The proposed amendment is to eliminate this table which is now out of date. During the past few months, developers in a few cases submitted information proving they had previously contributed to the cost of an impact fee facility and thus were entitled to a category exemption under the ordinance. In the future, further documentation may also change the list of exemptions. Since these exemptions may be updated, the table should be eliminated from the ordinance.
4. The category exemption text is also being clarified to note that amendments to exempted property will be subject to impact fees.
5. The last amendment to this section is in regards to the processing of low and moderate income housing fee reimbursements. Section 27.82.060 (d) currently requires the house to be **occupied** prior to the fee reimbursement being valid. However, providing fee reimbursements after the closing on the new house was problematic for lenders and builders. The revised text eliminates the requirement the house be occupied. The applicant will still have to prove the household buying the house meets the low and moderate income thresholds. The amendment will allow for an alternative time for the reimbursements, such as at time of closing, rather than requiring reimbursement at time of occupancy. The low income housing amendment is also found in Section 27.82.080.
6. The amendment to Section 27.82.070 "Impact Fee Funds" would clarify that the previously approved administrative costs would be deducted from the fees collected not added to the fee. Currently, the ordinance states in Section 27.82.110 that administrative costs would be an additional charge. The text in Section 27.82.110 is being eliminated and new text added to 27.82.070 to clarify that no more than 2% could be used for administrative costs.
7. The amendment to 27.82.110 (h) "Miscellaneous Provisions" is in regards to the previously titled "Discretion to Reduce Impact Fees." This section is being revised to clarify that the Reimbursement of Impact Fees in this section should only be for economic development based on an objective criteria. The current language provides for the discretion of a super majority (5 of 7) of the City Council to reduce impact fees based on goals and objectives of the City Council.

The proposed text states that the Impact Fee Administrator would reimburse arterial street impact fees for economic development only in conformance with the criteria adopted by the City Council. (See staff report Misc. #03012 for the review of the

criteria) This criteria is designed to be completely objective and include no amount of discretion. If a primary employer provides the creates and maintains for 3 consecutive years, 30 new jobs and invests \$3 million in buildings and equipment, then 50% of the arterial street impact fees would be reimbursed. The reimbursement is 100% for the creation of 100 new jobs and a \$10 million investment.

8. The processing of impact fee reimbursements will be less time consuming and easier to administer by having the Impact Fee Administrator follow the City Council's measurable criteria. It will also provide more predictability for the companies investing in the community.
9. The amendment in Section 27.82.110 (k) "Adjustments for Inflation" is being amended to start adding inflation in January 2005, rather than 2004. In addition, the amendment would have the inflation added automatically each year rather than by a separate action of the City Council each year. The amendment also designates the 12 month time period prior to August of each year as the period for using the U. S. Consumer Price Index for All Items.
10. The amendment to Section 17 of the approved impact fee ordinance relates to the arterial street section of the Impact Fee Study. Based on the recent recommendations of the Mayor's Infrastructure Finance Committee the following changes in the calculation and use of the arterial street impact fees is proposed:
  - 1) Developers should continue to pay for sidewalks along arterial streets, instead of using arterial street impact fee funds to build sidewalks. Section 26.23.095 "Sidewalks" of the Land Subdivision Ordinance requires sidewalks along both sides of all streets including major streets. These sidewalks will remain the responsibility of the adjacent property owner or developer.
  - 2) Utility adjustments in street projects would not be paid from arterial street impact fees. Any movement of water or sanitary sewer lines caused by road projects would be paid for using utility rate funds.
  - 3) Clarify that developers should continue to pay for additional traffic signals, if and when warranted -- except that signals at the intersection of two major streets and approximately at the ½ mile in between will be funded, when warranted, by impact fees. The amount of traffic signals per mile to be paid for by arterial street impact fees would be reduced from 3.5 to 1.5. This would provide for financing of signals at the intersections of two major streets and generally at the ½ mile point in between.

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**APPLICANTS:**

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**PROPOSED AMENDMENTS TO IMPACT FEE ORDINANCE**

A. "Section 6. That Title 27 of the Lincoln Municipal Code be amended by adding a new section numbered 27.82.060 to read as follows:

**27.82.060 Exemptions From Impact Fees.**

(a) Exemptions From All Impact Fees. The following types of development shall be exempted from payment of all impact fees otherwise due pursuant to this ordinance:

(1) Replacement of a destroyed or partially destroyed residential building or structure with a new building or structure of the same use, and with the same number of residential units, provided that the rebuilding or replacement occurs no later than fifteen years after the demolition or removal of the previous structure.

(2) Replacement of a destroyed or partially destroyed nonresidential building or structure with a new building or structure of the same gross floor area and use, provided that the rebuilding or replacement occurs no later than fifteen years after the demolition or removal of the previous structure.

(3) Installation or replacement of a mobile home on a lot or site where all impact fees for such lot or site have previously been paid pursuant to this ordinance or where a mobile home legally existed on such lot or site on or prior to June 2, 2003.

(4) Room additions, remodeling, rehabilitation or other improvements to an existing structure, provided that there is no increase in the number of dwelling units for residential use or in the amount of gross square footage for nonresidential use.

(5) Construction pursuant to a building permit ~~issued~~ based upon a complete application filed with the City prior to June 2, 2003, provided the construction proceeds according to the terms of the building permit. If said building permit application expires, application for a new building permit shall be treated the same as a new development. A building permit application shall not be deemed to be complete until the application, together with all required attachments, information, or other accompanying documents, are filed with the City.

(6) Low Income Owner-Occupied Housing.

(i) An Owner-Occupied unit which is sold to a household whose income is 60% or less of the area median gross income adjusted for a household size shall be entitled to a 100% exemption from all Impact Fees.

(ii) An Owner-Occupied unit which is sold to a household whose income is more than 60% but is 80% or less of the area median gross income adjusted for a household size shall be entitled to a 50% exemption from all Impact Fees.

(7) Low Income Rental Housing located outside of a low or moderate income area.

(i) A Tenant-Occupied unit which is restricted to rental to a household whose income is 60% or less of the area medium gross income adjusted for household size shall be entitled to a 100% exemption from all Impact Fees.

1 (ii) A Tenant-Occupied unit which is restricted to rental to a household  
2 whose income is 80% or less of the area medium gross income adjusted for a household size  
3 shall be entitled to a 50% exemption from all Impact Fees.

4 (8) Development or construction by any governmental entity for which the  
5 governmental entity has the statutory power of eminent domain shall not pay any impact fees  
6 since these entities are exempt from local zoning.

7 (9) Development or construction by the Housing Authority of the City of  
8 Lincoln pursuant to the Nebraska Housing Agency Act.

9  
10 (b) Exemptions From Specific Impact Fees. The following types of projects shall  
11 be exempted from the following types of impact fees:

12 (1) Development, pursuant to a written agreement or other approval between  
13 the City and a developer which was entered into prior to June 1, 2002, and which specifically  
14 included or required the participation by the developer in the financing or construction of the  
15 Impact Fee Facilities for the approved development shall be exempt from the impact fee  
16 charged for those specific types of Impact Fee Facilities the developer agreed to finance or  
17 construct in whole or in part. Amendment, modification, or other changes to the approved  
18 development will be subject to the imposition of impact fees in accordance with the provisions  
19 of Section 27.82.050. Agreements or other approvals qualifying for such exemptions are listed  
20 in Table 27.82.060(b) at the end of this chapter. The Impact Fee Administrator shall determine  
21 whether or not any other agreement or other approval qualifies for an exemption.

22 (2) Where the Bureau of Fire Prevention requires that a water meter be  
23 increased in size above that required for the ordinary usage of a building or other facility for  
24 the purposes of maintaining fireflow to internal lines, the water and wastewater fees for that  
25 building or other facility shall be based on the meter size that would be required without regard  
26 to the fireflow requirements.

27 (3) Any separate water meter connected only to an irrigation system and not  
28 to any building or other facility designed for human occupancy shall not be included in the  
29 calculation of the wastewater impact fee.

30 (4) Other types of development shall be exempted from payment of specific  
31 impact fees otherwise due pursuant to this ordinance if the person applying for a permit for  
32 such development or the person seeking to engage in such development for which no permit  
33 is required can demonstrate that the proposed land use and development will produce no  
34 additional demand for a specific Impact Fee Facility beyond what was generated from such  
35 site prior to the proposed development, using an average cost (not marginal cost)  
36 methodology. The fact that a proposed development has direct access to, or is located close  
37 to, an existing facility of the type covered by an impact fee, shall not by itself be evidence that  
38 the proposed development will have no impact on the need for Impact Fee Facilities of the  
39 type covered by the impact fee.

40  
41 (c) Request for Exemption Required. If a permit is required for the proposed  
42 development, any such claim for exemption must be made no later than the date of the  
43 application for the permit for the proposed development except that a claim of exemption for



1 Low-Income Owner-Occupied Housing or ~~Low Income Rental Housing~~ must be made no later  
2 than ~~30~~ 60 days following the date the housing is first occupied. If the issuance of a permit is  
3 not required for the development, then any such claim for exemption must be made no later  
4 than the occurrence of any one of the following events, whichever occurs first:

5 (1) Completion of any connection to the City's water and wastewater  
6 systems; or

7 (2) The date when any part of the development opens for business or goes  
8 into use.

9 Any claim for exemption not made at or before that time provided above shall  
10 be deemed waived.

11  
12 (d) Determination of Validity. The Impact Fee Administrator shall determine the  
13 validity of any claim for exemption pursuant to the criteria set forth in this ordinance. ~~An~~  
14 ~~exemption for Low Income Owner-Occupied Housing or Low Income Rental Housing shall not~~  
15 ~~become valid until after the City receives verification that such housing is occupied by an~~  
16 ~~eligible household.~~

17  
18 (e) Funding of Exemptions. The proportionate share of any Impact Fee Facility or  
19 Impact Fee Facility Improvement cost directly related to the exemptions granted pursuant to  
20 Subsection (a)(6), (7), and (8) above shall be funded from a revenue source other than impact  
21 fees.”

22  
23 B. “Section 7. That Title 27 of the Lincoln Municipal Code be amended by adding  
24 a new section numbered 27.82.070 to read as follows:

25  
26 **27.82.070 Impact Fee Funds.**

27 (a) Creation of Benefit Districts. Impact fees shall be spent only within the benefit  
28 district in which they were collected, except that (1) water system impact fees, water  
29 distribution impact fees, and wastewater impact fees may be spent for water system impact  
30 fee facility improvements, water distribution impact fee facility improvements, and wastewater  
31 impact fee facility improvements, respectively, outside the corporate limits of the City which  
32 benefit the district in which they were collected; and (2) any arterial street used as a boundary  
33 between two arterial street benefit districts shall be considered as included within both benefit  
34 districts and may be improved with fees collected in either benefit district. The following  
35 benefit districts are hereby created:

36 (1) Water System Impact Fee Benefit District shall be the area served by  
37 the Lincoln water system;

38 (2) Water Distribution Benefit District Nos. 1 through 7, inclusive, shall be  
39 the respective incorporated areas of the City established and shown on the Water Distribution  
40 Impact Fee Benefit Areas Map as Water Distribution Benefit Area Nos. 1 through 7, inclusive.

41 (3) Wastewater Impact Fee Benefit District shall be the area served by the  
42 Lincoln Wastewater System;

1 (4) Arterial Street Impact Fee Benefit District Nos. 1 through 7, inclusive,  
2 shall be the respective incorporated areas of the City established and shown on the Arterial  
3 Street Impact Fee Benefit Areas Map as Arterial Street Benefit Area Nos. 1 through 7,  
4 inclusive, except for that portion of the Downtown/Antelope Valley Exclusion Area located  
5 within any of areas.

6 (5) Neighborhood Park and Trail Impact Fee Benefit District Nos. 1 through  
7 7, inclusive, shall be the respective incorporated areas of the City established and shown on  
8 the Neighborhood Park and Trail Impact Fee Benefit Areas Map as Neighborhood Park and  
9 Trail Benefit Area Nos. 1 through 7, inclusive, except for that portion of the Neighborhood Park  
10 and Trail Impact Fee Exclusion Area located within said areas.

11  
12 (b) Creation of Impact Fee Fund. An Impact Fee Fund is hereby created and shall  
13 include a separate impact fee account for each impact fee benefit district as an interest  
14 bearing account distinct from the General Fund of the City:

15  
16 (c) Monies in an Impact Fee Account. Each impact fee account shall contain only  
17 those impact fees collected pursuant to this ordinance for the types of Impact Fee Facilities  
18 reflected in the title of the account plus any interest which may accrue from time to time on  
19 such amounts.

20 ~~(e)(d)~~ Use of Monies in an Impact Fee Account. The monies in each impact fee  
21 account shall be used only:

22 (1) To acquire or construct Impact Fee Facilities or Impact Fee Facility  
23 Improvements of the type reflected in the title of the account and in the location specified in  
24 Section 27.82.070(a); or

25 (2) As described in Section 27.82.080 (Refunds) or as described in Section  
26 27.82.090 (Post-Ordinance Agreements), or as described in Section 27.82.100 (Pre-  
27 Ordinance Reimbursements), or

28 (3) To retire bonds, or other obligations of indebtedness issued to fund the  
29 construction of Impact Fee Facility Improvements.

30 (4) To pay consultant fees to update the impact fees.

31 (5) To pay the expenses of collecting the fee and administering this  
32 ordinance, except that no more than two percent (2%) of the impact fees collected may be  
33 used to compensate the City for such expenses. In the case of refunds of impact fees under  
34 Section 27.82.080, or reimbursements under Sections 27.82.090 and 27.82.100, the City  
35 shall be entitled to retain up to two percent (2%) of the impact fee payments made by the  
36 applicant or the reimbursement due the applicant as payment for the expenses of processing  
37 the refund or reimbursement request."

38  
39 C. "Section 8. That Title 27 of the Lincoln Municipal Code be amended by adding  
40 a new section numbered 27.82.080 to read as follows:

**27.82.080 Refunds of Impact Fees Paid.**

(a) Passage of Time. Any monies in any impact fee account that have not been spent or encumbered within eight years after the date on which such fee was paid shall, upon application to the Impact Fee Administrator by the fee payor, be returned to such person with interest since the date of payment at the rate earned by the City on the fees. Fees shall be deemed to be spent on the basis that the first fee collected shall be the first fee spent. Within six months of the end of the eight-year period from the date on which the unspent impact fee was paid, the Impact Fee Administrator shall notify the fee payor of eligibility for a refund at the address listed with the Impact Fee Administrator. In order to receive such refund, the fee payor shall be required to submit an application for such refund within twelve months after the expiration of such eight-year period. Any monies in an impact fee account for which no application for a refund has been timely made shall be retained by the City and expended on the type of Impact Fee Facilities reflected in the title of the account without further limitation as to time of expenditure.

(b) Expiration of Permit. If a person has paid an impact fee required by this ordinance and has obtained a building permit or any other permit for a development or extensions thereto, and the permit or extension for which the fee was paid later expires without the possibility of further extension, and the development activity for which the impact fee was imposed did not occur and no impact has resulted, then such fee payor shall be entitled to a refund of the fee paid, with interest. In order to be eligible to receive such refund, such fee payor shall be required to submit an application for such refund within six months after the expiration of the permit or extension for which the fee was paid.

(c) Approval of Owner Occupied Low Income Housing Exemption. If, after an impact fee has been paid pursuant to this ordinance for a development which subsequently qualifies for an Owner Occupied Low Income Housing Exemption pursuant to Section 27.82.060(a)(6), then such fee payor shall be entitled to a reimbursement of the fee paid, without interest. In order to be eligible to receive such reimbursement, such fee payor shall be required to submit an application for such exemption and reimbursement no later than 60 days following the date such housing is first occupied.

~~(c)(d)~~ No Refund for Altered Development. After an impact fee has been paid pursuant to this ordinance, no refund of any part of such fee shall be made if the development for which the fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the development, the number of units in the development, or the amount of traffic generated by the development.

~~(d)(e)~~ Notice to Fee Payor. At the time of payment of any impact fee under this ordinance, the Impact Fee Administrator shall provide the person paying such fee with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any collection of any impact fee under this ordinance.”

1  
2 D. "Section 11. That Title 27 of the Lincoln Municipal Code be amended by adding  
3 a new section numbered 27.82.110 to read as follows:  
4

5 **27.82.110 Miscellaneous Provisions.**

6 (a) Interest. Interest earned on monies in any impact fee account shall be  
7 considered part of such account, and shall be subject to the same restrictions on use  
8 applicable to the impact fees deposited in such account.  
9

10 (b) First-In/First-Out Accounting. Monies in each impact fee account shall be  
11 considered to be spent in the order collected, on a first-in/first-out basis.  
12

13 (c) No Operation or Maintenance. No monies from any impact fee account shall  
14 be spent for periodic or routine operation or maintenance of any facility of any type.  
15

16 (d) No Restriction on Development Conditions. Nothing in this ordinance shall  
17 restrict the City from requiring a person to construct reasonable project improvements  
18 required to serve such person's project, whether or not such improvements are of a type for  
19 which reimbursements are available under Section 27.82.090.  
20

21 (e) Records. The Impact Fee Administrator shall maintain accurate records of the  
22 impact fees paid, including the name and address of the person paying such fees, the project  
23 for which the fees were paid, the date of payment of each fee, the amounts received in  
24 payment for each fee, and any other matters that the Impact Fee Administrator deems  
25 appropriate or necessary to the accurate accounting of such fees, and such records shall be  
26 available for review by the public during City business hours.  
27

28 (f) Assignment of Impact Fee Account Monies. The approved Capital  
29 Improvement Program which includes any Impact Fee Facilities scheduled for construction  
30 shall assign monies to fund in whole or in part such Impact Fee Facilities from the Impact Fee  
31 Fund Account of the type for which the fees in that account were paid. Any monies, including  
32 any accrued interest, not assigned to specific projects within such capital improvements  
33 program and not expended pursuant to Section 27.82.080 (Refunds) or 27.82.090  
34 (Reimbursements) shall be retained in the same impact fee account until the next fiscal year.  
35

36 ~~(g) Administrative Costs. The City shall be entitled to collect an additional charge~~  
37 ~~of not more than two percent of each impact fee collected as payment for the expenses of~~  
38 ~~collecting the fee and administering this ordinance. In the case of refunds of impact fees~~  
39 ~~under Section 27.82.080, or reimbursements under Sections 27.82.090 and 27.82.100, the~~  
40 ~~City shall be entitled to retain not more than two percent of the impact fee payment made by~~  
41 ~~the applicant or the reimbursement due to the applicant as payment for the expenses of~~  
42 ~~processing the refund or reimbursement request.~~

1           ~~(h)~~(g) Mistake or Misrepresentation. If an impact fee has been calculated and paid  
2 based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by  
3 a person shall be refunded by the City to such person within thirty days after the City's  
4 acceptance of the recalculated amount, with interest since the date of such overpayment at  
5 the rate earned by the City on the funds. Any amounts underpaid by such person shall be paid  
6 to the City within thirty days after the Impact Fee Administrator's acceptance of the  
7 recalculated amount, with interest since the date of such underpayment at the rate then earned  
8 by the City on its impact fee funds. In the case of an underpayment to the City, the City may  
9 refuse to issue any additional permits or approvals for the project for which the impact fee was  
10 previously underpaid until such underpayment is corrected, and if amounts owed to the City  
11 are not paid within such thirty-day period, the City may also repeal any permits issued in  
12 reliance on the previous payment of such impact fee and refund such fee to the then current  
13 owner of the land.

14  
15           ~~(i)~~(h) Discretion to Reduce Reimbursement of Impact Fees to Promote Economic  
16 Development. In order to promote the economic development of the City, ~~or the public health,~~  
17 ~~safety, and general welfare of its residents, the City Council by an affirmative vote of at least~~  
18 ~~five of its members may agree to pay~~ the City shall reimburse a developer for some or all of  
19 the arterial street impact fees imposed on a ~~proposed~~ development or redevelopment from  
20 other funds of the City that are not restricted to other uses. ~~Any such decision to pay~~ No such  
21 reimbursement of arterial street impact fees on behalf of a proposed development shall be  
22 at the discretion of the City Council and shall be made pursuant to goals and objectives  
23 adopted by the City Council to promote such development shall be made except in  
24 conformance with specific economic development criteria and qualifications adopted by  
25 resolution of the City Council which, if met, entitle a developer to a reimbursement of some or  
26 all of the arterial street impact fees imposed on the development.

27  
28           ~~(j)~~(i) Appeals. Any determination made by any official of the City charged with the  
29 administration of any part of this ordinance may be appealed by the aggrieved party to the  
30 City Council by filing (1) a written Notice of Appeal on a form provided by the City, and (2) a  
31 written explanation of why the appellant feels that a determination was in error. Appeals must  
32 be filed with the City Clerk within ten days after the determination for which the appeal is being  
33 filed. At the regular meeting following the filing of the appeal, the City Council shall fix a time  
34 and place for hearing the appeal, and the City Clerk shall mail notice of the hearing to the  
35 appellant at the address given in the Notice of Appeal. The hearing shall be conducted at the  
36 time and place stated in such notice given by the City Council. In an appeal of an impact fee,  
37 the Council shall not waive the fees, although the fees may be reduced pursuant to subsection  
38 ~~(i)~~(h) above or may be reduced upon a finding that the impact fee was incorrectly calculated,  
39 or that unusual circumstances of the development demonstrate that application of the fee to  
40 the development would be unfair or unjust. The City Council shall make specific and detailed  
41 findings of fact with respect to each controverted issue on appeal. The determination of the  
42 City Council shall be final.

1           ~~(k)~~(j) Periodic Review. The impact fees and the administrative procedures  
2 established by this ordinance shall be reviewed at least once every three fiscal years to  
3 ensure that:

- 4                   (1) The demand and cost assumptions underlying such fees are still valid,  
5                   (2) The resulting fees do not exceed the actual cost of constructing Impact  
6 Fee Facilities of the type for which the fee was paid and that are required to serve new  
7 development,  
8                   (3) The monies collected or to be collected in each impact fee fund have  
9 been or are expected to be spent for Impact Fee Facilities of the type for which such fees  
10 were paid, and  
11                   (4) That such Impact Fee Facilities will benefit those developments for which  
12 the fees were paid.

13  
14           ~~(j)~~(k) Adjustments for Inflation. Beginning on January 1, 2005, and on January 1 of  
15 each following year unless and until the impact fee schedules are otherwise revised or  
16 replaced by City Council, each fee amount set forth in each schedule shall be adjusted to  
17 reflect the effects of inflation on those costs set forth in the Impact Fee Study by multiplying  
18 such amount by a fraction, the numerator of which is the U.S. Consumer Price Index for All  
19 Items for the most recent ~~period for which figures are available~~ month of August, and the  
20 denominator of which is U.S. Consumer Price Index for All Items for the period one year prior  
21 to the period reflected in the numerator. ~~Such adjustments in such fees shall become effective~~  
22 ~~upon approval by resolution of the City Council.~~

23  
24           ~~(m)~~(l) Violations. Violation of this ordinance shall be a misdemeanor and shall be  
25 subject to those remedies provided in Section 27.81.070. Knowingly furnishing false  
26 information to any official of the City charged with the administration of this ordinance on any  
27 matter relating to the administration of this ordinance, including without limitation to knowingly  
28 furnishing false information regarding the expected size, use, or traffic impacts from a  
29 proposed development, shall be a violation of this ordinance. In addition to or in lieu of any  
30 criminal prosecution, the City or any person applying for a permit of the types described in  
31 Section 27.82.050(a) or any person seeking to engage in a development for which no permit  
32 is requested shall have the right to sue in civil court to enforce the provisions of this  
33 ordinance.”

34  
35           E.       “Section 16. That the Downtown/Antelope Valley Exclusion Area Map, the  
36 Water Distribution Impact Fee Benefit Areas Map, the Arterial Street Impact Fee Benefit  
37 Areas Map, and the Neighborhood Park and Trail Impact Fee Benefit Areas Map, attached  
38 hereto marked as Exhibit Nos. 1 through 4, are hereby adopted and incorporated herein by  
39 reference, and that Exhibit Nos. 1 through 4 be codified in Chapter 27.82 of the Lincoln  
40 Municipal Code as Appendixes 1 through 4, respectively.”

41  
42           F.       “Section 17. The Lincoln Impact Fee Study prepared by Duncan Associates  
43 attached hereto and marked as Exhibit No. 5 is hereby adopted and incorporated herein by

1 reference, except that (1) Table 4, "Arterial Street Cost Per Mile," on Page 12 of the Lincoln  
2 Impact Fee Study is hereby amended to exclude sidewalks, water and wastewater line  
3 adjustments and to reduce the number of units for "Full Intersection Traffic Signals" from 3.5  
4 to 1.5 units per mile in determining the total cost per mile for a four-lane arterial as shown on  
5 Attachment A; (2) the text on Page 12 of the Lincoln Impact Fee Study is hereby amended to  
6 delete the following paragraph:

7 *It should be noted that developers are currently required to make some of*  
8 *these improvements, such as installing sidewalks on adjacent arterials. By*  
9 *including these components in the fee, developers will either not be required*  
10 *to make these improvements, or else they will be given credit for the value of*  
11 *such improvements against the arterial street impact fee.*

12 and (3) any other text in said study which may be affected by the above specified amendments be and they are hereby  
13 amended to conform with such specific amendments. One printed copy of the above Impact Fee Study has been filed  
14 in the office of the City Clerk for use and examination by the public."  
15

16 G. ~~"Section 20. That this ordinance shall be in full force and effect as of June 2, 2003, after its passage~~  
17 ~~and publication according to law. Pursuant to Article VII, Section 7 of the City Charter, this ordinance~~  
18 ~~shall be posted on the official bulletin board of the City in lieu of and in place of newspaper~~  
19 ~~publication with notice of passage and such posting to be given by publication one time in the~~  
20 ~~official newspaper by the City Clerk. This ordinance shall take effect and be in force and effect~~  
21 ~~as of June 2, 2003 from and after its passage and publication as herein and in the City~~  
22 ~~Charter provided."~~  
23

24 Pursuant to Article VII, Section 7 of the City Charter, this ordinance shall be posted on  
25 the official bulletin board of the City in lieu of and in place of newspaper publication with notice  
26 of passage and such posting to be given by publication one time in the official newspaper by  
27 the City Clerk. This ordinance shall take effect and be in force from and after its passage and  
28 publication as herein and in the City Charter provided.  
29